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Guest: State courts could return to secrecy in cases

The Washington state Supreme Court is considering rules that would make it easier to seal court records, according to guest columnists Katherine George and George Erb.

By Katherine George and George Erb

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A farm corporation paid $650,000 to settle federal charges of sexual harassment and retaliation against five farmworkers in Lind, Adams County.

Bates Technical College in Tacoma, which has paid a total of nearly $2 million to settle three lawsuits by former students alleging shoddy vocational programs, now faces a fourth suit.

And in the latest of many settlements involving abused and neglected children, the state Department of Social and Health Services agreed to pay $9 million to six siblings after the oldest two were tortured by their stepfather, a convicted child rapist.

These are just a few examples of cases within the past year that affected not only the parties involved, but the general public. Our tax dollars paid for prosecuting or defending these lawsuits. The outcomes may influence how workers, students and vulnerable children are treated in the future.

But what if the public could not learn about settled cases? What if Washington courts returned to the days when defendants could buy secrecy, sealing files as a condition of settling?

The state Supreme Court is considering sweeping revisions to General Rule 15 that would make it easier to seal court records, especially when the parties settle before a judge or jury makes a decision. Under the proposed rule, the constitutional requirement for openness would apply to lawsuit records only if those records became "part of the court's decision making process."

The Washington state Supreme Court is accepting comments on the proposed rule until Wednesday.

If approved, evidence of wrongdoing could be hidden, without considering the general public's interests, simply because parties believe there is "good cause" for secrecy. For example, a high-profile CEO or politician who discriminates, harasses or embezzles could pay off the victims and then make sure nobody ever learns what happened.

Such secrecy was routine before the state Supreme Court changed the rules in 2006 so that sealing could not be based solely on agreement of the parties. That rule change followed a series of articles in The Seattle Times, "Your Courts, Their Secrets," exposing a widespread pattern of courts sealing entire files without considering the public interest.

According to The Times, King County judges sealed 1,378 court files from 1990 to 2005, but largely stopped the practice after the public learned that important safety concerns were hidden at the request of parties, including government agencies.

The presently proposed rule threatens to undo the progress made since The Times series and the 2006 rule amendment shifted the tide against secrecy. If the proposal is adopted, it would be easier to seal court files in criminal as well as civil cases, and public access to court records would be more often decided without considering the public interest.

Under the proposal, if criminal charges are dismissed, vacated or pardoned, or defendants are acquitted, there would be a "sufficient privacy" interest to outweigh the public's interest in evaluating whether the criminal justice system worked properly.

The public could be prevented from examining court files to understand whether a prosecution should have been brought in the first place, or whether systemic reforms are needed to protect public safety. Also, the public would have a hard time questioning the wisdom of a governor's pardons if the court files of pardoned criminals are sealed.

The proposed rule would allow judges to seal court files forever. There would be no expiration dates for the sealing of juvenile records, and even the existence of a sealed juvenile file would be secret.

So a school, neighbor or employer may not discover that a juvenile has a history of theft, vandalism, drug dealing or other public disturbance that would warrant caution.

The Judicial Information Systems Committee proposed these changes to address legitimate privacy concerns. But courts already protect private interests fairly under the current rules, considering the public interest in each case. As the state Supreme Court has said, "Openness is a vital part of our constitution."

Attorney Katherine A. George is legal chair of the Washington Coalition for Open Government.

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